
XXI.

BRIEF NOTES ON RECENT DEVELOPMENTS AND PARLIAMENTARY AUTOPHAGY

Much of the previous chapter may already be subsumed into this new one regarding recent developments and parliamentary dysfunction. The aforesaid would not, however, suffice or be properly highlighted in view of the growing relevance of the problem under scope.

In effect, the recent evolution of the Legislative Assembly's work, with respect to the subject-matter of this Handbook (and to other correlated issues), be it at the level of normative production — eg the modifications to the Rules of Procedure — or at the level of other factors — eg committee reports, President's decisions to reject amendment proposals and Members' bills, Board decisions — unfortunately instils and reinforces such ideas of parliamentary dysfunction — a veritable self-maiming by the Legislative Assembly — or of a progressive retraction of the powers granted to the MSAR's legislative body.

The said phenomena contradict the system outlined in the Basic Law, with a strongly negative impact on the competences and status of both the Legislative Assembly, as an institution, and the Members thereof.

Below, I shall discuss such involutions, which do warrant legitimate concern.

1. Normative Involutions

I shall delve into the two most recent amendments to the Rules of Procedure of the Legislative Assembly — the reviews of 2015 and 2017.

In both reviews, one may clearly detect an involution, an erosion of Members' powers and rights, a belittling of their functions and acts — eg the typology of Members' bills, as affected by reinforcement or aggrandisement of acts originating from the Executive, the supreme example of which are Government bills.

This predicament has unfolded into a *de facto* questioning of the principle of equally formal dignity between both types of bills.

One must recall that the Rules of Procedure — an enactment comprised of truly binding legal norms, and endowed with the force of law on the basis of its constitutional legitimacy — are also protected by the general principle of continuity established in the

Joint Declaration and in the Law Basic.⁹⁸⁶ In other words, the key idea of essential inalterability, of maintaining the mould of the previous legal system and legal order, is reflected in the Rules, except, under the terms of the Basic Law, insofar as it may "*contravene this Law*",⁹⁸⁷ ie unless in case of non-conformity with the Supreme Law of Macau.

Nothing in the Basic Law allows for the assumption that the Rules of Procedure to which it refers, especially under Article 77, are radically different from the Rules in force before the establishment of the MSAR. In fact, a cursory reading of the current Rules confirms that the Legislative Assembly conceived its Rules of Procedure in a way which is, structurally and fundamentally, a continuation of the previous one, with the natural exception of a few differences, either directly dictated by the Basic Law, or by new lawmaking options (for example, the stage of approval in general, prior to the report by the Committee, and not after issuance thereof, as was the procedure in the past).

Beginning with an analysis of Resolution No. 1/2015, Amendment to the Rules of Procedure of the Legislative Assembly.

This Resolution amended Articles 2 (Powers of supervision), 53 (Subject-matters for the period before the agenda), 60 (Right to take the floor for presentation of bills and proposals), 72 (Duration of addresses when taking the floor), 109 (Renewal of initiative), and 142 (Subject-matter of hearings) of the Rules of Procedure of the Legislative Assembly, and also repealed Article 54 (Extension of the period before the agenda) thereof.

In addition to curtailing Members' speaking time, Article 109 (on the renewal of the legislative initiative) underwent major modifications.

The respective Explanatory Note sought to present and justify the reasons for this profound change, in a manner which I deem unsatisfactory: it invokes irrelevant reasoning; hints at the risk of — undemonstrated — non-conformities with the Basic Law; uses elements from the pre-1999 framework in a somewhat misleading way; presents a need for clarification that did not exist; concurred with certain arguments from comparative law and the history of Law, but did not shy away from making the changes, etc

The said Note reads as follows:

"Thus, and with regard to Article 109, more specifically the scope of paragraph (1), many Members have sent opinions to the Committee, as well

⁹⁸⁶ See *inter alia*, Paulo Cardinal, 'Fragmentos em torno da constituição processual penal de Macau — do princípio da continuidade ao princípio da dignidade humana' in Manuel da Costa Andrade and Susana Aires de Sousa and Maria João Antunes (eds), *Estudos em Homenagem ao Prof. Doutor Jorge de Figueiredo Dias*, vol III (Coimbra Editora, 2010) 753 et seq.

⁹⁸⁷ Article 8 of the Basic Law establishes that the laws, decree-laws, administrative regulations "and other normative acts previously in force in Macau shall be maintained". The residuary category of other normative acts includes the Rules of Procedure.

as suggestions for alterations to its wording, with a view to clarifying the scope of this norm and its relationship with the Government's powers in matters of legislative initiative. At the same time, the Committee undertook an analysis of the subject-matter — both of scholarship and of comparative law — concluding that there are norms similar to that of Article 109, paragraph (1) in the vast majority of the studied parliamentary rules of procedure, with the purpose of preserving procedural economy and dignity in the carrying out of parliamentary activity. However, the Committee considered that, in spite of the appropriateness of the principles underlying the norm of Article 109, paragraph (1), it is necessary to ponder its conformity with several norms of the Basic Law, namely, with Article 64, subparagraph (5) and with of Article 71, paragraph (1), according to which the Legislative Assembly is the sole body to 'Enact, amend, suspend and repeal laws', contrary to the Organic Statute of Macau, which enshrined, in its Article 5 that 'the legislative function shall be exercised by the Legislative Assembly and the Governor' [...] Thus, the limits to the renewal of legislative initiatives are now restricted to the respective proponents, Members or Government. Therefore, when a Member's bill on a given subject is not approved or is definitively rejected in a legislative session, it cannot be introduced again during the same legislative session. The same principle applies to the Government's bills; in other words, if a Government bill is not approved or is definitively rejected in a legislative session, the Government cannot resubmit it to the Legislative Assembly during the same legislative session, without prejudice to the exceptional cases set out in Article 52, subparagraph (2) of Basic Law. The Committee believes that the new text of Article 109, paragraph 1) now proposed [...] respects the powers of the legislative initiative of both the Members and the Government."

I cannot fail to warn that this modification is indeed profound and disregards both Macau's constitutional history and the teachings of comparative law.

What, in my view, did not occur, upon approval of Resolution No. 1/2015, was the continuation of the symbolic status of parity among all bills, at least *prima facie*, by establishing an apparent differentiation depending on the type of initiative and by specifying such distinction through the use of separate subparagraphs for Members' bills and Government bills — ie it is lamentable that such differentiation of frameworks, based on the type of legislative initiative, was introduced, thus turning the equal formal parity between both types of bills on its head.

In view of this new procedural understanding, doubts may be stirred — taking into account the *praxis* of little success in approving Members' bills and a high rate of approval of Government bills — if this path will not lead down a road of further degradation of the status of Members' bills. These may become more *freely* rejected, even if substantively worthy of being approved, for if the matter really needs to be regulated

under the law, the Government may always, at any time, introduce a bill on the same subject-matter.

On the other hand, the reference to Article 64, subparagraph (5), of the Basic Law⁹⁸⁸ is useless, as the general power of the Government to introduce bills may not be interpreted as being absolutely unrestricted, namely for the purposes of renewing initiative legislatures *vis-à-vis* certain timeframes, as has been occurring in Macau (and as is often the case in comparative law). Equally improper is the reference that nowadays, and, unlike the Organic Statute of Macau, under which “*the legislative function shall be exercised by the Legislative Assembly and the Governor*”, the legislative competence in the MSAR lies only with the Legislative Assembly.⁹⁸⁹ What were the legal effects intended to be adduced from such a statement? That the Government may introduce bills, repeatedly and successively, until they are finally approved? That, after all is said and done, the Legislative Assembly only has the power to approve Government bills, but not the power to not approve them?

Resolution No. 2/2017 amended Articles 11, 17, 31, 34, 42, 49, 52, 58, 59, 81, 98, 110, 111, 112, 135, 136, 139, 141, 146, 149, 154 and 161, and repealed Article 11, subparagraph (d), and Article 110, paragraph (2), of the Rules of Procedure of Legislative Assembly.⁹⁹⁰

With this in-depth review, the tendency to diminish Members’ powers and, concurrently, those of the parliamentary institution, is deepened, in contrast to the reinforced powers of the Executive within the legislative procedure.

A first comment to stress that the traditionally established possibility of adoption of an initiative was expunged, without any convincing reason, from the Rules of Procedure, upon repeal of Article 110, paragraph (2).⁹⁹¹ This mechanism, as is easily discernable, conferred more efficiency and rationality to the legislative procedure, and pertained to a vision of the legislative procedure that accepts the switch of the dominant role in the legislative process after the submission of initiatives.

The aforementioned Resolution No. 2/2017 made further significant changes to Article 110.

⁹⁸⁸ “(5) Introduce bills and draft resolutions, and enact administrative regulations;”.

⁹⁸⁹ Furthermore, the politico-legislative framework established by the Organic Statute of Macau, in force until 19 December 1999, is not properly characterised. As mentioned by the same Committee in a Report of 2014, “*since the Governor had legislative competence, limiting the power to renew a rejected legislative initiative would not cause the Governor political and legislative problems, namely a deadlock in the approval of a given legislative act, since the Governor could always, on his/her own, enact Decree-Laws on the matters that were subject to a negative deliberation by the Assembly.*” I must clarify that such was not the exactly the case. In fact, the Report of 2014 by the same CRPMM shows some awareness thereof in a footnote: “*The Governor could always, ie in matters not reserved to the Legislative Assembly.*”

⁹⁹⁰ In addition to amending the Chinese language version of Article 17, subparagraph (d).

⁹⁹¹ It established that “If another Member adopts, as his or her own, any and all bills intended to be withdrawn, the initiative shall continue as the bill or bills of the adopting Member.” Adoption of any type of initiative as one’s own meant that a Member could go ahead with the legislative procedure even when a Government bill was withdrawn.

Henceforth, “the proponents of a bill may withdraw it until the debate on the specifics thereof begins.” The respective Explanatory Note lays out the following:

“The current rule in paragraph (1) of this Article allows legislative initiatives to be withdrawn until the end of the general debate, in the case of original initiatives, or until the end of voting on the specifics, in the case of supervening initiatives. It appears, however, that, for various reasons, it has been necessary to withdraw some legislative initiatives after its approval in general; therefore, this norm has to be amended in accordance with the Legislative Assembly’s operating practice. Thus, several Members suggested that such rule be changed insofar as to enshrine the following: any bill may be withdrawn by its proponents until the final stage of its appraisal, ie until the beginning of the debate on the bill’s specifics. The Committee considers that, in this matter, the primacy of will/intent of the proponent (Members and Government) should be respected, which explains the suggested amendment to the norm, in harmony with the opinions received in the two hearings carried out by the Committee.”

This formal text of the Legislative Assembly alleges “that, for several reasons, there has been already a need to withdraw some legislative initiatives after their approval on the whole”, after accepting what was obvious under the then applicable framework, ie that original legislative initiatives could only be withdrawn until the end of the general debate — why did the Committee not draw the logical conclusions and, instead, muddle the waters? It is one thing to amend and adapt the Rules to a sustained praxis; a wholly different matter is a praxis that was (repeatedly) violating applicable procedural norms, thus generating an obvious non-conformity with the Rules, by means of invalidating deficiencies or mere irregularities. In other words, by incorporating into the Rules a previously created praxis — unsupported by the procedural normative corpus and unsolicited by an absence of lacunae — not even the text subject to amendment permitted the solutions adopted by the praxis. Such was the practice at times: a disagreement with the Rules resulted in an amendment thereto, without pondering the negative conclusions to be reached nor signalling the practices to be avoided. Could this sanitised approach open the gates for non-compliance with the Rules?

Article 111, governing the first stage of the legislative procedure — acceptance and rejection of bills, especially *vis-à-vis* Government bills, and challenges to decisions thereon — was also substantially modified. In effect, the respective Explanatory Note mentions that:

“The wording of this Article has been profoundly changed, since the current norm is lacking in clarity, confusing the acceptance process with the rejection, in the context of appealing decisions of the President, as well as presenting little clarity regarding the procedural framework for appealing the President’s decisions regarding legislative initiatives. In view of the above, the procedures for the acceptance and the rejection of bills by the

President have been separately established. Appeals of the President's decisions shall be admissible only in the event of rejection of Members' bills, the scope of the appellants being confined to the respective proponents. The appeal shall, in the first instance, be brought to the Board of the Legislative Assembly; only subsequently, if such body maintains the President's decision, shall the appeal be submitted to the Plenary."

Why is there no appellate procedure for challenging decisions that reject Government bills? Such an omission will presumably not, I hope, induce or lead one to infer the impossibility of rejecting bills, nor could such be the case — *inter alia*, in relation to a Government bill in clear violation of the Basic Law. Such an interpretation, if it were to gain ascendancy, would deal a severe blow to the status and to the functions of the Legislative Assembly and, certainly, represent a gross deviation from the fundamental rules and principles of a normal legislative procedure, integrated in a legal order aspiring to an effective *Rule of Law*.⁹⁹² I must concede defeat in attempting to understand the *raison d'être* of this procedural option.

And why is there no appellate procedure for challenging decisions that accept (any and all) bills?

A final note on a perfectly useless addendum, which reminds one of 'La Palisse's dictum' — pursuant to Resolution No. 2/2017, a paragraph (4) was inserted into Article 81, wherein the following was made unnecessarily and inadequately explicit: "*approval by simple majority entails that the deliberations in question obtain more votes in favour than against.*"

2. Other Features of Involution

In this section, I have grouped together several non-normative features, which nevertheless have a profound impact, perhaps even larger, on the legislative procedure and on the erosion of the powers and rights of Members, thereby leading to a loss in their status. Such features occur both through action and by omission.

On the one hand, there are the Reports of the CRPMM, a committee specialised precisely in these matters and, as such, whence one legitimately expects an increased value attached to the reports rendered in this scope. And also, whence the formulation of opinions — and not a furtive, abstaining attitude of "deciding not to decide" — is warranted.

On the other hand, there are decisions to reject amendment proposals to Government bills and decisions to reject Members' bills.

Other features could be mentioned, namely, the summoning/convening notices

⁹⁹² And not a dictatorial system, without any interwoven support based on legality, separation of powers, etc, wherein, perhaps, such a description would be more fitting.

(and requirements thereof) of formal committee meetings, the usurpation of the committee or Plenary functions by the Board, and the transparency and respect *vis-à-vis* the media; I believe, however, that the above-mentioned two main areas shall prove more than sufficient in illustrating the risky dysfunctional drift affecting our parliament.

Report No. 1/VI/2017 by the CRPMM focuses on a process for suspension of mandate and not focusing, *prima facie*, on the legislative procedure. Nonetheless, its importance *per se*, added to the indirect repercussions in several legislative processes and to a possible desire to create a precedent, justify addressing the content thereof in this section.

The said Committee did not issue a true advisory report, as procedurally required, but rather a kind of descriptive report. Furthermore, not only did it not express an opinion on the issue in hand but it rather opined on another one: uncovering, groundlessly without the slightest attempt to provide any reasoning, a manifestly non-existent conflict of interests.⁹⁹³ This was an alleged situation occurring within the Committee and, through an illegal decision by the Board, effectively projected to the Plenary until the end of the suspension process. The same Committee also took upon itself to prepare a ballot form wherein the possibility of abstention was not even included...

The CSI, in Case No. 20/2018, ruled that “The Committee, which had met twice, drew up a document which it called a ‘Report’”, ie that document did not contain a legally relevant opinion or advice, resembling a mere narrative or descriptive report.

Among other shortcomings, the Committee did not examine or procedurally prepare,⁹⁹⁴ — as it should have — a formal suspension process. It did not allow the affected Member to exercise his right of defence to be heard in Committee, and therefore the so-called “Report” did not include such a Member’s stance; coupled with the impossibility of the latter taking the floor to address the Plenary, this meant that his peers did not — nor could have the opportunity to — know the arguments in his defence!

What transpired countermanded applicable procedural norms and was contrary to the only precedent in Macau’s parliamentary History. In 1997, a process to suspend a mandate was triggered and procedurally followed through, with due examination, and ended with the decision not to suspend the Member in question. The Member exercised his right of defence before the Committee on the Rules of Procedure and Members’ Mandates, the essential content of his defence was reproduced in a Report (a true advisory opinion), and the committee also alerted the remaining Members to a given fact that

⁹⁹³ As noted above. I recall the wording of said Report: “the suspension of the mandate is relevant not only to the Member concerned, but also, and essentially, to the Legislative Assembly as an institution.”

⁹⁹⁴ Cf subparagraph (b) of Article 26: “The Committee on the Rules of Procedure and Members’ Mandates is competent to: (...) Conduct the enquiry proceedings relating to the processes of disqualification and suspension of mandates and to issue the respective reports, under the terms provided for in the Legal Status of Members;”.

potentially could be decisive for the Plenary's deliberation.⁹⁹⁵

Report No. 1/VI/2019 of the CRPMM addresses two distinct issues; I find it impossible to understand the underlying logic of aggregating two very different subject-matters, both in their nature and in their relevance, in a single report; was such treatment permitted simply because the questions were raised by the same Member?

This Report contains several far-fetched arguments, some of which do merit deep concern. For example, in relation to an important issue, with obvious implications, both in the present and in the future, the Committee once again decided not to decide, in one case affirming peremptorily that where the law does not distinguish, the interpreter should not distinguish; in another case — under the same report — where the law does not distinguish, the Committee introduced deep distinctions in a legal framework, thus severely restricting Members' right to lodge protests.

Report No. 1/VI/2019 of the CRPMM sets out several considerations on the procedural right to lodge protests and points out "new rules". I disagree, on several fronts, with the contents of the said report.

The Committee admitted that, since there is no provision for the publication of written protests in the Legislative Assembly's Bulletin, there may be written protests and not only oral ones!

However, such protests, in a tortuous interpretation, would only be admissible if and when, at the end of the plenary meeting, it had not been possible to present them orally, in such a manner as to achieve the desired non-publication thereof in the Bulletin.⁹⁹⁶

The same Report accepts the existence of counter-protests, despite the complete silence thereon in the Rules. So where there is an express provision on written protests, the committee interprets this power in a highly restrictive way, whereas here, despite being absent from the normative provisions of the Rules of Procedure, the committee interprets very broadly and generously, granting such prerogative. Why such disparities in approach? Why these winding paths? Why the absence of an interpretative compass?

Furthermore, I am surprised by this attitude when, in such a Report — which operates a highly restrictive interpretation by distinguishing (and re-creating) where the legislator/norm-maker did not distinguish (stating that there can only be written protests in special cases, such as the end of the plenary meeting) — furthermore candidly and

⁹⁹⁵ See CRPMM, Report No. 2/97. This report expressly mentioned the right of the affected Member to be heard, the documentary evidence produced at the hearing, the existence of a certain matter of relevance for the final position to be taken on the issue. Such Committee complied, in a short and lean report, with the applicable requirements and effectuated the guarantees to be accorded to the Member's defence.

⁹⁹⁶ It should also be noted that the protest — as in the case of the challenge on the other issue — was not even appended to the Report. Only the decision on its rejection was so appended... When it came to the mandatory formal publication of parliamentary acts, such a decision was the only one to be published, the lodged protest having been left out...

rightly affirms, on another issue, “where the legislator does not distinguish, the interpreter should not distinguish”. This is precisely the error repeated in that very same Report.

I cannot fathom what motivated the core opinion given in Report No. 1/VI/2019, which stated that once “the legislative procedure has been concluded”, it is impossible to produce legal effects upon such approved law. Such a conclusion was delivered on the other issue under scope, a challenge to a decision to reject an amendment proposal to a Government bill.

It is known that any law is always subject to the possible scrutiny of its constitutional conformity — in the MSAR, with the Basic Law, as demanded by its Article 11 — in the context of successive or a posteriori judicial control or review and, on the other hand, the opinion by the Committee completely ignores the balancing of the possible deficiencies detected, pointing to an undifferentiated handling between a mere “irregularity”, and an evident breach of a procedural or constitutional norm, be it substantive or formal in nature. Invalidating and non-invalidating deficiencies are not distinguished. Perhaps the wording of the opinion did not reflect the true intent of the Committee; otherwise, such understanding intolerably undermines the Rules, its function and legal value, and may possibly represent an attempt towards an illegitimate functional interpretation to meet a pre-ordained result. GOMES CANOTILHO thus warns of the “*control of deficiencies relative to the formation of the lawmaking body’s will/intent, which determine the very existence of the law.*”⁹⁹⁷

See also the Decision of the CFA in Case No. 61/2018, pointing to the need for a weighting of values. In short, one might even pose the question of whether said opinion, as expressed, does not generate some sort of “invitation” to contravene the Rules.

Therefore, I cannot adhere to the position taken in Report No. 1/VI/2019 of the CRPMM, that “*when the legislative procedure is concluded*”, it is impossible to produce legal effects on the approved law and, therefore, the “[s]*ubmitted challenge may not be considered, as such procedure could not possibly produce any useful effect.*”⁹⁹⁸

I am also dumbfounded by how the Committee chose not to deliver an opinion on the substance of the main issue: a challenge to the President’s decision to reject a proposed amendment to a Government bill. In a period of about a week, in two different legislative processes, two Members presented two amendment proposals to Government bills; both proposals were rejected by the President, despite the Rules of Procedure and the Basic Law both requiring their acceptance — in one case, in the opposite direction to that which was expressed in the Report of the standing committee and, in the other, in contrast to the precedent that occurred previously in view of the same law object of the amending bill in question.

⁹⁹⁷ Gomes Canotilho, *Direito Constitucional e Teoria da Constituição* (Almedina 2003) 857.

⁹⁹⁸ I recall the CFA Decision on Case No. 61/2018, with interest to the broader issue of the mentioned closure of the legislative process and to the possible subsistence of useful effects.

A very relevant, controversial and potentially recurring issue was therefore left unanswered. In this instance, the Committee abdicated its role of interpretative clarification, as provided for in Article 26 of the Rules of Procedure.

Another non-normative feature of involution is the *usurpation of functions* by the Board of the Legislative Assembly, detected on a couple of occasions and resulting in unfavourable consequences for Members.

One such case is that of Board Deliberation No. 35/2017, dated 22/11/2017, by which it was determined, namely, that the Member in question was in a situation of conflict of interests, being thus prohibited from participating in the debate and voting in the plenary meeting to be held on the suspension of his mandate. This Deliberation is illegal because this body is devoid of competence to deliberate on conflict of interests, as Article 35, paragraph (4) of the Legal Status of the Members undoubtedly lays down — the Plenary of the Legislative Assembly is the competent decision-making body. The letter and the spirit of the law are perfectly clear, doubt-free, and there is, obviously, no omitted case or procedural lacuna, contrary to what the Board tried to argue, in self-contradicting terms. See, moreover, the Decision of the CSI in Case No. 20/2018, where the Court ruled that “It is not for the Court to ascertain (for judicial procedural reasons) whether it (the Board) did so legitimately, or if whoever could have deliberated was the Plenary of the Legislative Assembly as the author of the decision to suspend the Member’s mandate.”

It is beyond comprehension how the Board of the Legislative Assembly declared, pursuant to an unreasoned report by the CRPMM, that a conflict of interests existed in relation to a Member *vis-à-vis* a process in which such Member was the subject of a possible suspension of his very own mandate.

The Board’s decision was lacking, both organically — as it was not the competent body— and substantively, as the whole dynamics of the conflict of interests framework is rendered worthless whenever the intended protective scope is the public interest, namely parliamentary representation, both with regard to the exercise of the mandate by the Member in question, and also, essentially, in relation to the Legislative Assembly as an institution. A contrary viewpoint would be tantamount to a gross undermining — and a possible reorientation to other types of objectives — of such a framework.

A further example of a Board *ultra vires* deliberation is that of the *Report on the assessment of the bill presented by Member Tong Io Cheng*, of 28 March 2017.⁹⁹⁹ One must underline that this is a type of Board report unheard of, both before and since. It has

⁹⁹⁹ This very long report suffers from several shortcomings, in addition to what is referred to in the body of this text: it is unconvincing with respect to the fundamental issue; it winds through unexpected paths; it ignores relevant issues; it is verbose in some passages, whereas in others the discourse is curbed, namely with quotes from reports of the Legislative Assembly; it cites unworthy sources for a report of this nature, such as Wikipedia, even more so strange as it occurs in an absolute focal point of the subject-matter; it invokes wholly irrelevant norms, etc

serious flaws both from an organic-formal stance, and in terms of substance since it greatly reduces the sphere of the power of Members of the parliament to freely introduce bills in a way that makes it almost impossible to do so, virtually considering everything as a matter pertaining to government policies.¹⁰⁰⁰

The Board opined in favour of rejecting such a bill on the grounds that Government policy was at stake, thus suggesting to the President the issuance of a decision of summary rejection. Here, the procedural roles were reversed: on this type of issue — acceptance or rejection of bills — the first to decide, in his/her own right, is always the President. Only afterwards may the Board intervene, on appeal, per the provisions of Article 111 of the Rules of Procedure.

In truth, there is no provision in the Rules of Procedure for the Board to issue such reports — see Articles 17 and 18 thereof. The allusion to subparagraph (f) of Article 18, “*To exercise the other powers conferred thereto by the present Rules of Procedure*”, necessarily means that, somewhere in the Rules, this competence — which I am unable to discover — actually exists or is declared to exist.

Nor may one say that the Board acted under Article 159, paragraph (1) of the Rules (Interpretation and solving of omitted cases) — “The Board is competent to interpret the present Rules and to solve the omitted cases, being able, for this purpose, to consult the Committee on the Rules of Procedure and Members’ Mandates” — as this norm is not invoked, nor referred to, in said report.

Turning my attention to the issue underlying the report (and the consequent decision to reject the Member’s bill), one must pose the following question: may a bill, purposively and substantively of a mere interpretative, or clarifying, nature, *vis-à-vis* a single provision of the Land Law (Article 104, paragraph (5)), be rejected because Government policy is allegedly at stake?

I cannot countenance such a rationale, as it would be construed as an overly generous interpretation of procedural norms in favour of the Government, and deeply restrictive to the Members of parliament itself, encapsulating an inadmissible and undesired compression under the Basic Law. In other words, this rejection did serious harm to the Basic Law, the Rules and the status and dignity of the Legislative Assembly and its Members. I hope that this was an unfortunate — but isolated — incident, and not a signal or indication of a new *policy*. A really new policy or attitude is that which would be the outcome: one need only go through the list of Members’ bills which have been accepted — albeit not necessarily approved — in the past; indeed, several of them were much more impactful and structural than a simple interpretative law, and addressed subject-matters adjacent to the object of the bill in question.

The impact of the use, and abuse, of this Board *ultra vires* deliberation in the rejection of bills presented by Macau parliament Members is obvious and more and more

¹⁰⁰⁰ See Chapter IX of this book.

felt. Similar bills previously always accepted (albeit later on not meriting approval in Plenary) by the President of the Legislative Assembly, are now being simply preliminarily rejected on the grounds of the above-said Deliberation, even when the content is totally similar to previously accepted bills¹⁰⁰¹ — all this in the face of exactly the same unchanged applicable norms.

Perhaps this hints to new informal and politically based ways of changing the legal system while keeping appearances of unchanged, thus continued, norms, instead of following the pre-established legitimate, normal, and adequate patterns and procedures; thus posing very important issues of legitimacy, constitutionality, legality, normative certainty and security, trust, and so on.¹⁰⁰²

Obviously, a different issue would be for the Plenary, in exercising its competence, to evaluate the opportunity, convenience, justice, etc, of the bill, and, accordingly, to decide whether to approve or reject it. However, the Plenary's decision-making power was unduly withheld therefrom.

This discourse on non-normative involutions with potentially even greater damaging effects cannot be complete without mentioning two decisions by the President, which rejected two amendment proposals, submitted by different Members, in the period

¹⁰⁰¹ For a single example, one can bring in here the Bill entitled *Action to challenge the confidentiality of information or to refuse to provide it or to carry out consultations*, regulating some aspects of fundamental rights connected to workers and privacy, presented by Member Pereira Coutinho, was introduced in 2013 and in 2015 and, at both instances, accepted and then followed the normal procedure; however, in 2021, an extremely similar content bill was preliminarily rejected by the President of the Legislative Assembly, alleging that it needed the Chief Executive's consent per reason of the above-said Report from the Board. Again, the applicable norms are exactly the same, in this respect, since 2013.

¹⁰⁰² This worrisome tendency can be seen to gain traction lately namely on potentially sensitive areas such as freedom of demonstrations or electoral issues where, even in the face of exactly the same rules, and despite common and unchanged previous praxis, the decisions of late — Police, Electoral committees and even courts — portray a very different kind of decision (sometimes the clear opposite of the previous standard and easily anticipated ones) from prior ones and, usually if not always, entailing a direction and an effect of restricting rights, mostly fundamental ones, namely its practical use and enjoyment. Again, I underline that this is so in spite of the formal valid norms being the same and unchanged and, of course, still in force. This *attitude* may be somehow normal in other historic legal and political systems, maybe even current ones, but it does not present itself as proper, adequate, legitimate, or constitutional in the face of the system designed by the Joint Declaration and the Basic Law.

À propos, I remember here the following words:

"I don't know what you mean by 'glory,'" Alice said.

Humpty Dumpty smiled contemptuously. "Of course you don't — till I tell you. I meant 'there's a nice knock-down argument for you!'"

"But 'glory' doesn't mean 'a nice knock-down argument,'" Alice objected.

"When I use a word," Humpty Dumpty said in rather a scornful tone, "it means just what I choose it to mean — neither more nor less."

"The question is," said Alice, "whether you can make words mean so many different things."

"The question is," said Humpty Dumpty, "which is to be master — that's all." Lewis Carroll, *Through the Looking-Glass, And What Alice Found There* (The Project Gutenberg eBook 1991) Chapter VI.

In systems where the Rule of Law is imperative, as is the case of Macau, there is no place for Humpty Dumpties. One can add that the once famous and practised aphorism in idle times *Si veut le Roi, si veut la Loi* does not have a place in a legal and political system such as those of the SARs, regardless of who the *Roi* might be in concrete.

of around a week, to two Government bills.¹⁰⁰³ One such decision, as seen above, was challenged.

One should take heed of the very clear and recent examples of illegal rejection — due to infringement of the norms contained in the Basic Law and in the Rules, as previously discussed — of amendment proposals, submitted by Members, to Government bills.

The following rejected amendment proposals are relevant:

- Regarding the Government bill resulting in Law No. 11/2018 — *Amendment to Law No. 2/93/M, of 17 May — Right of Assembly and Demonstration*, submitted to, and rejected by, the Plenary held on 30/07/2018; and
- Regarding the Government bill resulting in Law No. 12/2018 — *Legal framework for guaranteeing the rights and interests of the elderly*, submitted to, and rejected by, the Plenary held on 07/08/2018.

The invalid decision to reject such amendment proposals is stranger and more peculiar if one takes into account, in the first case, that there was clearly no legislative initiative reserved to the Government, especially because the immediately preceding amendment to the law (Law No. 16/2008) had, in fact, resulted from a Members' bill; in addition, the bill was subject to a set of amendment proposals drawn up by the Committee.¹⁰⁰⁴

Neither the original initiative by a group of Members, nor the supervening initiative by the Committee, requested or received authorisation from the Chief Executive — it did not occur to anyone that the subject-matters would be deemed as Government policy. From 2008 to 2018, no norm of the Basic Law or the procedural law on such issues was modified. The normative framework in force, then and today, is exactly the same *apropos* this theme.

In the second case, the decision is so unexpected and illegal that it contradicts the position expressed in writing by the Standing Committee entrusted with the legislative process.

Report No. 5/VI/2018, of the FSC, reads as follows:

“In effect, and very briefly, one must remember that — since this Government bill is not (nor could it be) included in the framework of limitations under Article 75 of the Basic Law and Article 107 of the Rules

¹⁰⁰³ These are worrisome and, at times, even bizarre situations. For example: a Member at the plenary meeting defending his competence to submit an amendment proposal — the admissibility of which had the express backing of the competent committee in that legislative process — the high representative of the Government *consenting* to such proposal, and the President of the Legislative Assembly maintaining the decision to reject the proposed amendment...

¹⁰⁰⁴ Cf Report No. 2/III/2008 of the TSC.

of Procedure of the Legislative Assembly, in the (dubious) enlargement of constitutional restrictions — the Committee and the Members *per se*, may introduce, as they see fit, proposals to amend the Government bill, pursuant to Article 106 of the Rules of Procedure ... In truth, the exercise of this power of supervening legislative initiative by the Members and/or the Committees, does effectively exist — it has historical grounding and is wholly appropriate and in full conformity with the Basic Law of Macau.”

Quoting a very relevant report by the CRPMM, to quell any possible doubts:

“Do recall that which is peremptorily affirmed in Report No. 1/III/2009 of the Committee on the Rules of Procedure and Members’ Mandates: ‘The exercise of the legislative power conferred to this Legislative Assembly obviously includes the power to introduce specific amendments to both Government bills and Members’ bills; otherwise, it would be impossible to understand what constitutes the legislative power granted by the Basic Law to the Legislative Assembly, much less could one perceive, as a mere example, the *raison d’être* of Article 117 [now 119] of the Rules of Procedure of this Legislative Assembly.’”

For all of the above reasons, and because the recent positions of the holders of the office of President have differed from several committees’ advisory reports, the (non-)solution reached in Report No. 1/VI/2019, of the CRPMM, is utterly beyond comprehension. The said report concludes by stating that the “Submitted challenge may not be considered, as such procedure could not possibly produce any useful effect.” Even though it might possibly be devoid of immediate usefulness — a mere hypothetical concession — the truth is that the utility and the relevance of the issue far exceed the specific case in hand, projecting itself undoubtedly into the future, in view of the aforementioned discrepancies over the years.

I could catalogue other features of involution, but I shall end with just one more unique example: Deliberation No. 21/2017/Plenary,¹⁰⁰⁵ as published in the OG, contains two Articles, only the first one having been voted on in the Plenary itself... and not the second Article, relative to such deliberation’s entry into force...

Such, in gist, is the regressive scenario of late.

It remains for one to kindle the belief in a return to a healthy evolution, guided by the *rule of law*, and respectful of the powers and rights of Members, thus conferring greater institutional dignity to the Legislative Assembly, namely, but not only, in what respects to its supreme role of enacting laws and the corresponding legislative

¹⁰⁰⁵ “Article 1 (Suspension of a Member’s mandate) The Plenary of the Legislative Assembly deliberates the suspension of Member Sou Ka Hou’s mandate.

Article 2 (Entry into force) The present deliberation shall enter into force immediately upon approval thereof.”

procedure.¹⁰⁰⁶ Ultimately, one desires an evolutionary path towards the fullest respect for the importance and primary functions of both the legislative procedure and the Rules of Procedure. The Basic Law and the Principle of “One Country, Two Systems” so require.

¹⁰⁰⁶ *À propos*, one can bring in here the following contextualisation: “‘Discontent with parliaments’ legislative process seems to be pervasive. The perception that there is something seriously broken in the contemporary legislative process is shared by legislative scholars, the public, and legislators themselves. This view is shared, moreover, across a wide range of legal systems — from the U.S. Congress to ‘the mother of Parliaments’ in England to China, with many stops in between. The task of mending the contemporary legislative process is daunting. In some political systems, the challenge may seem herculean. The problems are many and their roots are varied and deep. Hence, any hope to find a panacea or a ‘magic bullet’ would be foolish. Yet, the quest to improve the legislative process is by no means quixotic and is too important for us to have the luxury of giving up. There are many promising ideas that can make a real, even if incremental, change.’”, Ittai Bar-Siman-Tov, ‘Mending the Legislative Process – The Preliminaries’ (2015) 3(3) *Theory and Practice of Legislation* 245.